



H.R. 2768 – S-MINER Act of 2007

EXECUTIVE SUMMARY

H.R. 2768 was introduced by Representative George Miller (D-CA) on June 19, 2007. The House Committee on Education and Labor approved the bill by a vote of 26 to 18 (strictly along party lines) on October 31, 2007. H.R. 2768 is expected to be considered on the floor of the House of Representatives under a structured rule on January 16, 2008.

The bill requires new mine safety regulations on a variety of issues, including seals on mines, underground refuge chambers, and emergency communications systems. Some of these new regulatory requirements would undercut ongoing rulemaking processes that are currently underway as a result of the bipartisan mine safety legislation passed in the previous Congress, the MINER Safety Act of 2006 (P.L. 109.236).

The Congressional Budget Office (CBO) “estimates that implementing the bill would cost \$14 million in 2008 and \$117 million over the 2008-2012 period.” The bill would also impose several unfunded mandates on mine operators, which would total approximately \$1 billion.

Republicans on the House Committee on Education and Labor argue that “H.R. 2768 does little more than effectively gut the MINER Act, extend regulatory timeframes for compliance on important issues that have been examined over the last sixteen months, and eviscerate any number of robust rulemaking processes.” The Administration has also issued a veto-threat for H.R. 2768 that highlights similar concerns.

FLOOR SITUATION

H.R. 2768 is being considered on the floor under a structured rule. The Rule:

- Provides one hour of general debate equally divided and controlled by the Chairman and Ranking Republican Member of the Education and Labor Committee.
- Waives all points of order against consideration of the bill except for clauses 9 (earmarks) and 10 (PAYGO) of Rule XXI.
- Provides that the amendment in the nature of the substitute recommended by the Committee on Education and Labor, now printed in the bill, shall be considered as an original bill for the purpose of amendment and shall be considered as read.
- Waives all points of order against provisions of the bill. This waiver does not affect the point of order available under clause 9 of rule XXI (regarding earmark disclosure).
- No amendments shall be in order except those amendments printed in the Rules Committee report accompanying the resolution.
- Provides that the amendments made in order may be offered only in the order printed in the report, may be offered only by a Member designated in the report, shall be considered as read, shall be debatable for the time specified in the report equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question in the House or in the Committee of the Whole.



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- Waives all points of order against the amendments printed in the report except for clauses 9 and 10 of rule XXI.
- Provides one motion to recommit with or without instructions.
- Provides that, notwithstanding the operation of the previous question, the Chair may postpone further consideration of the bill to a time designated by the Speaker.

This legislation was introduced by Representative George Miller (D-CA) on June 19, 2007. The House Committee on Education and Labor approved the bill by a vote of 26 to 18 (strictly along party lines) on October 31, 2007. H.R. 2768 is expected to be considered on the floor of the House of Representatives on January 16, 2008.

SUMMARY

Mine Seals: The bill requires the Secretary of Labor to issue final regulations regarding the design, maintenance, and monitoring of mine seals within three months. The bill mandates that the Secretary implement the most recent recommendations of the National Institute of Occupational Safety and Health (NIOSH) regarding seal construction and upkeep. It also provides detailed requirements for the rules regarding the monitoring of these seals, including the use of boreholes for sampling. The bill extends the application of these regulations to underground metal and nonmetal mines. Seals are used in mines to cordon off unused or abandoned parts of the mine from the working areas in order to guard against explosions.

Note: Committee Republicans expressed concerns "that these provisions create the potential for an explosive oxygen-methane mix. Moreover, these provisions threaten to undermine the rulemaking mandated by the MINER Act that preceded the bill..." (Republican Views, 11/15/07)

Underground Refuge Chamber: The bill requires the Department of Labor to issue regulations before June 15, 2008, regarding underground refuges for mines. These regulations must incorporate the design criteria recommended by NIOSH. Furthermore, the regulations must mandate the installation of these refuge chambers in the working areas of underground mines within 60 days of the plan's approval.

Note: According to Committee Republicans, "the Democrat Majority has chosen to legislate based on supposition, in the process curtailing stakeholder input through rulemaking, and mandating prescriptive provisions for the use of rescue chambers."

Belt Air: The bill requires the Secretary to revise belt air regulations to allow its usage only if a mine operator petitions for it and meets certain criteria. Under current law, belt air can be used. The Miner Act (P.L. 109-236) required a study of belt air that was completed in December 2007. December's Omnibus required MSHA to finalize new regulations based on the belt air study. "Belt air" refers to a mine ventilation technique that uses belt entries to aerate the mine.

Note: Committee Republicans objected to this provision, arguing that it "is fundamentally flawed, and appears to be intended to achieve legislatively what organized labor could not convince a court to do—overturn MSHA's belt-air regulation." (Republican Views, 11/15/07)

Communications Plan: The bill requires the Department of Labor to provide a plan for a post accident communications system between underground workers and surface personnel as well as an electronic system for tracking individuals trapped underground. It also mandates that the plan be revised to incorporate new technology that NIOSH certifies can be added to the existing system.



Note: Committee Republicans expressed concerns that mandating the usage of NIOSH certified equipment "creates not only a conflict in the law, but a potentially serious safety concern" because it would not necessarily have been approved as intrinsically safe by the Mine Safety and Health Administration. (Republican Views, 11/15/07)

SCSR Inspection Program: The bill requires the Department of Labor to establish a program to randomly test self-rescue devices in coal mines to ensure they are working up to government standards. NIOSH is given the authority to determine the number of devices removed in the testing program and the mines from which they will be picked. The bill requires device manufacturers and mine operators to notify the Labor Department of any problems with the devices, and it requires the Labor Department to notify all operators of any problems detected.

Master Inspector Program: The bill requires the Department of Labor to establish a Master Inspector program within 270 days of the bill's enactment. The intent of the program is to ensure the Department has an adequate number of qualified mine inspectors. To accomplish this goal, the bill abolishes the numerical limit on Administration-hired mine inspectors for five years. It also authorizes the Department to rehire retired inspectors without disrupting their retirement benefits in order to maintain the number of mine inspectors at the Department's historical highest levels.

Office of Miner Ombudsman: H.R. 2768 establishes the Office of the Miner Ombudsman within the Labor Department. The Ombudsman will be tasked with 1) collecting information on mining accidents, injuries, and violations; 2) promoting practices that protect miners and others who report mining accidents, injuries, or violations; and 3) creating and educating miners about a toll-free hotline and Internet website for confidential reporting of mining issues. The bill authorizes such sums as are required for creation and implementation of this office.

Emergency Call Center: The bill requires the Department of Labor to establish and maintain a central communications emergency call center for all mining operations. The call center must be adequately staffed 24-7 to handle emergency mine situations. The national hotline phone number must be distributed to all miners and mine operators on laminated cards.

The call center must maintain contact information (including home phone numbers in most circumstances) for mine rescue team members, local emergency and rescue services, mine operators, Mine Safety and Health Administration officials, State mine emergency officials, and mine worker representatives. This information must be updated at least every quarter.

Emergency Preparedness Plan: Within 6 months of enactment, the bill requires the Secretary of Labor to establish and disseminate guidelines for mining rescue operations that include a clear chain of command and distinguishes the role of private sector and State officials.

Family Liaison Requirement: The bill requires the Mine Safety and Health Administration (MSHA) to designate a permanent, full-time employee to serve as a Family Liaison to communicate with the families of miners during rescue operations. It also requires "a highly qualified representative" from the Department of Labor be present at mining accident sites to handle public communications during rescue operations.

Note: According to Committee Republicans, "MSHA has trained 14 officials to serve as Family Liaisons, as required under the MINER Act." (Republican Views, 11/15/07)

Recommended Exposure Limits: The bill mandates that the NIOSH forward its Recommended Exposure Limits (RELs) for chemicals and other hazards to the Department of Labor. The Labor Department must



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then adopt these recommendations into its Permissible Exposure Limits (PELs) for the mining industry. The bill provides miners and mine operators the opportunity to petition the Labor Department with concerns or comments regarding these regulations.

Note: According to Committee Republicans, "these provisions are nothing less than an attempt to eviscerate the regulatory process...regardless of the fact that these RELs are not subject to the same economic and technological feasibility requirements...This provision completely upends and discounts MSHA's statutory role in the rulemaking process." (Republican Views, 11/15/07)

Private Sector Mandates: The bill imposes several unfunded mandates on the private sector. The Congressional Budget Offices estimates that the mandates will cost the following amount:

- Conveyor Belts - \$600 million over 2008-2012 period;
- Continuous Monitoring Devices - \$120 million;
- Personal Dust Monitors – at least \$100 million;
- Atmospheric Monitoring Systems – initial cost would be greater than \$60 million; and

Post-Accident Communication Systems - \$400,000 per mine (at approximately 500 mines).

BACKGROUND

The Mining Enforcement and Safety Administration was established in 1973 as an agency within the Department of Interior. In 1977, Congress enacted legislation (P.L. 95-164), which transferred the agency to the Department of Labor and renamed it the Mine Safety and Health Administration (MSHA). P.L. 95-164 was the last major piece of legislation addressing mine safety prior to 2006.

In 2006, Congress passed and the President signed into law the Mine Improvement New Emergency Response (MINER) Act (P.L. 109-236). This bill required mine operators to 1) have detailed emergency response plans that include communications and tracking system requirements; 2) notify MSHA within 15 minutes of an incident; 3) increase supplies of oxygen; and 4) increase emergency drills.

Under the MINER Act of 2006, MSHA was required to improve regulatory requirements, for example, training for security rescue teams and standards for seals on mines. Additionally, the MINER Act enhanced penalties for mining violations and required studies to further improve various aspects federal mining regulations.

The MINER Act of 2006 also directed the National Institute for Occupational Safety and Health (NIOSH) to utilize its research programs to enhance the development and delivery of mine safety technology. NIOSH is a federal agency that is part of the Center for Disease Control and Prevention within the Department of Health and Human Services. It was established by the Occupational Safety and Health Act of 1970, along with the Occupational Safety and Health Administration, to help ensure safe and healthful working conditions for American workers.

[Mine Safety and Health Administration Website](#)

[National Institute for Occupational Safety and Health Website](#)

AMENDMENTS

(Below is the summary of the amendments that were made in order by the Rules Committee and may be offered on the floor of the House of Representatives)

- 1) Rep. George Miller (D-CA): (REVISED) The Manager's amendment would provide the mining industry with more time to install a new generation of fire-resistant conveyor belts. The



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amendment would also provide funds for MSHA to purchase a new generation of dust monitoring devices to limit black lung disease, and ensure that breathable air requirements of the MINER Act of 2006 are properly implemented. In addition, the amendment requires that the Secretary of Labor conduct a study on substance abuse by miners with recommendations for policy changes, in consultation with all interested parties. The Secretary shall report the findings within six months of the bill's enactment and, if she deems it feasible and effective, shall be authorized to establish a miner substance abuse testing, rehabilitation, and treatment program within MSHA in consultation with the interested parties.

- 2) Rep. Rick Boucher (D-VA): (REVISED) The amendment authorizes \$10,000,000 to award grants to provide rehabilitation services to current and former miners suffering from mental health impairments, including drug addiction and substance abuse issues, which may have been caused or exacerbated by their work as miners.
- 3) Rep. Brad Ellsworth (D-IN): This amendment offers relief to mine operators that have been assessed penalties and pay them in a timely fashion. It also establishes a trust fund within Treasury, composed of mine safety civil penalties. Funds from the trust fund can be used for mine safety inspections and investigations only.
- 4) Reps. Joe Wilson (R-SC) / John Kline (R-MN): Amendment in the Nature of a Substitute. The substitute amendment promotes the continued robust implementation of the 2006 MINER Act, increases worker safety by providing miners the opportunity to have a voice in mine safety, expands substance abuse programs to all mines to ensure safe working conditions for all miners, and addresses issues raised by the recent Crandall Canyon disaster.

COST

The Congressional Budget Office (CBO) "estimates that implementing the bill would cost \$14 million in 2008 and \$117 million over the 2008-2012 period." CBO also notes that the bill would impose several unfunded mandates on mine operators. [CBO Estimate: H.R. 2768](#)

ADDITIONAL VIEWS

According to Republican Members of the Education and Labor Committee, "H.R. 2768 does little more than effectively gut the MINER Act, extend regulatory timeframes for compliance on important issues that have been examined over the last sixteen months, and eviscerate any number of robust rulemaking processes." (*Republican Views*, 11/15/07)

"Several of the regulatory mandates in the S-MINER bill would weaken several existing regulations and overturn regulatory processes that were required by the MINER Act and are ongoing. These changes would provide no opportunity for stakeholder participation in the regulatory process and would impose burdensome and unrealistic time requirements. The S-MINER bill also would fundamentally change the investigation of mining accidents and jeopardize the ability to hold mine operators accountable for violations of mine safety regulations. For these reasons, the Administration strongly opposes House passage of the bill. If H.R. 2768 were presented to the President in its current form, the President's senior advisors would recommend he veto the bill." ([Statement of Administration Policy on H.R. 2768, 1/15/08](#))

MOTION TO RECOMMIT

Please find the Republican Motion to Recommit [here](#).



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